



August 4, 2003

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Gary A. Evenson
Acting Administrator, Telecommunications Division
Wisconsin Public Service Commission
610 North Whitney Way, 2nd Floor
Madison, WI 53705-2729

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COMMUNICATIONS SECTION

Dear Mr. Evenson:

Re: Commission Review of and Response
to the FCC's Triennial Review Order
Docket No. 05-TI-824

Pursuant to the Notice of Investigation dated July 25, 2003, enclosed for filing are the original and 16 copies of the Statement of Interest of Covad Communications Company.

If you have any questions concerning this matter, please feel free to contact me.
Thank you for your consideration.

Yours very truly,

A handwritten signature in cursive script, appearing to read 'Peter L. Gardon'.

Peter L. Gardon

Madison\113602PLG:LT

Encs.

cc Mr. William J. Cobb III (w/enc.)

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Commission Review of and Response to the
Federal Communications Commission's Triennial
Review Order Relative to Network Unbundling
Obligations and Related Issues

Docket No. 05-TI-824

STATEMENT OF INTEREST OF COVAD COMMUNICATIONS COMPANY

INTRODUCTION

Pursuant to the Notice of Investigation dated July 25, 2003, Covad Communications Company ("Covad") submits its Statement of Interest in this proceeding.

STATEMENT OF INTEREST

I. ISSUE #1: LINE SPLITTING

A. Issue

Are CLECs impaired by existing line splitting processes, rates and OSS currently available from ILECs?

B. Importance

ILEC processes, rates and OSS for line splitting are inadequate to allow CLECs to scale their businesses by offering customers a package of both voice and data services. Before line sharing can be transitioned out, state commissions must determine that the processes, rates and OSS for line splitting provide competitors with a meaningful opportunity to compete.

Line splitting is a simple arrangement that provides two services on a single customer loop, similar to when the ILECs add data services to an existing voice customer. Until the processes and systems that enable line splitting are as seamless and customer friendly as when an ILEC adds data services, CLECs' ability to compete in offering packages of voice and data service will be severely restricted. Significant obstacles stand in the way of scalable line splitting at this time. First, each ILEC has a morass of system and process limitations that make line splitting migrations difficult, expensive and, in some cases, service interrupting. For example, the systems and processes for adding UNE -P to a data line or adding data to a UNE-P line often require multiple orders, manual orders, or a combination of both and some threaten service interruption or unreasonably high nonrecurring charges for such migrations. Second, systems and processes that maximize the customer's ability to choose from a wide variety of service providers are simply nonexistent. Customers may wish to change voice providers, change data providers, and drop voice or data service at some time. These consumer choices are not supported by the existing ILEC line splitting systems and processes. Commissions must evaluate ILEC systems and processes to insure that these migrations are timely, seamless to the customer, result in minimal (if any) service interruption, and occur without any negative effects on 911 databases, telephone number retention and other customer impacting aspects of service. Additionally, there are virtually no systems or processes in place to enable line splitting in a UNE-L environment. These examples illustrate some, but not all, of the issues that must be addressed by state commissions to facilitate line splitting as a truly available competitive alternative.

C. Questions

1. Are the ILEC's pre-order, order, provisioning, and billing processes and OSS needed to provide line splitting electronic or manual?
2. Regardless of whether electronic or manual, do these processes and OSS enable customers to switch easily and quickly between carriers, both voice and data, without undue service disruption on the scale required for mass market services?
3. If manual, are those processes and OSS adequate, or should electronic processes and OSS be developed?
4. Have all migration scenarios for line splitting customers been identified? Do the answers to any of the questions in this section vary based upon the specific customer migration scenarios involved?
5. Are the customer migration processes, hardware, software, and interfaces in place for both ILECs and CLECs? Are they functional? Are they scalable? How should the migration functionality, capacity and scalability be measured? How can/should the ILEC demonstrate or "prove" that there is sufficient and/or adequate functionality, capacity, and scalability?
6. How should the timeliness of the migration process(es) be measured? How can can/should the ILEC demonstrate or "prove" that it can perform migrations on a timely basis? What standards should be used?
7. Does the RBOC have FCC- or state-approved performance measures for customer line splitting migrations that could be used – at least on an interim basis? What do those migration metrics and business rules measure? Functionality?

Timeliness? Other? Are those performance measures and business rules sufficient and appropriate on a long-term basis?

8. What process, hardware, software, or interface upgrades or modifications need to be made to better enable seamless, timely, accurate customer migrations between carriers, without undue service disruption on the scale required for mass market services? What are the testing and implementation schedules for those upgrades or modifications?

9. Are there 911 implications for the migration processes to residential mass market customers?

II. ISSUE #2: HYBRID COPPER-FIBER LOOPS

A. Issue

Is the ILEC required to unbundle hybrid copper-fiber loops?

B. Importance

Based on the FCC's press release, the FCC's decision in this regard appears to be without substantial legal or factual basis. It is incorrect to conclude that States may not require the unbundling of hybrid loops. Under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer "local loop transmission from the central office to the customer's premise." There is nothing in this provision that would limit loops to a particular technology or capacity. Second, states retain the right pursuant to independent state law to require that incumbents unbundle their networks and these provisions are not usually limited to particular technologies. States retain the right to unbundle network elements pursuant to independent state law authority.

In addition to the requirement that ILECs provide access on a UNE basis to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, UNE access to hybrid loops should be made available where there continues to be impairment, utilizing market-specific, granular findings. The FCC's finding of non-impairment does not preclude a state from finding, on the basis of a granular analysis in a given market or on a given route, that impairment exists. An FCC ruling also does not preclude a state from ordering unbundling pursuant to state law.

C. Questions

1. Are loops a bottleneck facility, irrespective of whether they are physically constructed of fiber, or copper, or both?
2. How would the denial of competitive access to hybrid copper loops impact competition in Wisconsin?
3. How are bundled service offerings impacted when competitors are denied access to hybrid copper fiber loops?

III. ISSUE #3: LINE SHARING ACCESS

A. Issue

Is the ILEC required to unbundle the high frequency portion of a copper loop (HFPL)?

B. Importance

Based on the FCC's press release, the FCC's decision in this regard appears to be without substantial legal or factual basis. It is incorrect to conclude that States may not require the unbundling of the high frequency portion of the loop. States retain the right pursuant to independent state law to require that incumbents unbundle their networks.

Consequently, while the FCC has not chosen to include the high frequency portion of the loop in its national minimum list of network elements, states have the authority (and under Section 271, the responsibility) to require the unbundling of the high frequency portion of the loop. States concerned about residential DSL competition should immediately initiate proceedings to unbundle the high frequency portion of the loop under independent state law authority.

The RBOCs' obligations to provide nondiscriminatory access to all local loop transmission that they make available to themselves is a statutory requirement of section 271, including the requirement to provide nondiscriminatory access to loop transmission via the HFPL. In particular, the FCC has consistently analyzed checklist compliance with respect to the HFPL as part of the RBOC's compliance with checklist item #4 (local loop transmission). Thus, for RBOCs, the statutory obligation to provide nondiscriminatory access to HFPL loop transmission capability exists independently of ILEC obligations under section 251(c)(3). Accordingly, regardless of the FCC's disposition of the linesharing UNE, and regardless of whether the HFPL is unbundled under independent state law authority, states must consider the terms of nondiscriminatory access to the HFPL and how to price that access, given the RBOCs' ongoing statutory obligation to provide that access wherever they seek or have obtained section 271 authority.

C. Questions

1. Are CLECs economically impaired without access to the high frequency portion of the loop because of the difference between the cost of entire loop

and the cost of the high frequency portion? Does that impairment render CLECs unable to compete in the residential market for DSL customers?

2. Are CLECs impaired without access to the high frequency portion of the loop because of the amount of time it takes an ILEC to provision a stand alone loop versus the time it takes to provision the HFPL? Does that impairment render CLECs unable to compete for customers using a stand alone loop while the ILECs compete using the HFPL?

3. Are CLECs impaired without access to the high frequency portion of the loop because of operational difficulties in provisioning a stand alone loop as opposed to the HFPL, including the ILECs requirement of a truck roll to provision the stand alone loop when none is needed for the HFPL?

4. Where spare copper is not available, especially in rural or underserved areas, should CLECs retain access to the HFPL?

5. What is the appropriate rate for access to the HFPL pursuant to section 271 or section 201/202 of the Act?

IV. ISSUE # 4: LINE SHARING TRANSITION TIMING

A. Issue

What is the timing and process for transitioning CLEC customers off HFPL?

B. Importance

Elimination of line sharing is purportedly being justified on the existence of line splitting as a competitive alternative. On that basis, states must insure that adequate processes exist to support line splitting arrangements before implementing any transition

out of line sharing. A transition is obviously not required if a state enforces access to line sharing under Section 271 or state law.

C. Questions

1. Are all ILEC processes for moving new or existing customers to a line splitting arrangement mechanized?

2. Are all ILEC processes for making changes to an existing line splitting arrangement, for example, change in voice provider, change in data provider, dropping the data service, mechanized? Can these changes be achieved with a single service order?

3. Are the intervals for provisioning a line splitting arrangement at parity with intervals at which ILECs add DSL to existing voice customers?

4. Are the nonrecurring charges for moving customers from UNE-P to line splitting equivalent to charges for provisioning a line sharing arrangement?

5. As customers move to and from line splitting arrangements, do they experience seamless transitions as when the ILECs add or remove DSL services from existing voice customers?

6. As customers move to and from line splitting arrangements, do ILEC processes insure minimal customer down time, mandatory retention of telephone numbers, reliable updates of E911 and white pages databases, and correct billing?

V. ISSUE #5: LINE SHARING TRANSITION PRICING

A. Issue

What is the appropriate price for HFPL during the transition period?

B. Importance

The FCC's order may provide guidance on the pricing of the HFPL during the transition period. In conjunction with the FCC's guidance, the pricing of the HFPL is a matter of contract interpretation and the application of interconnection agreement terms, over which the states retain authority under section 252. This includes the authority to resolve disputes over contract language implementing changes in law. Until parties reach agreement over, or states arbitrate resolution of contract language implementing, changes in law regarding the HFPL, existing interconnection agreement rates, terms and conditions for access to the HFPL should remain in effect.

Furthermore, states retain independent authority to unbundle the high frequency portion of the loop pursuant to state law. State proceedings to require access to the HFPL as a matter of state law should include in their final determinations the rates, terms and conditions for such access under state law. During any proceedings examining the unbundling of the HFPL under state law, existing interconnection agreement rates, terms and conditions for access to the HFPL should remain in effect.

Finally, it should be recognized by the states that TELRIC rates are necessarily “just and reasonable” under Sections 201 and 202 because they have already been adjudged “just and reasonable” under Section 252(d)(1). Thus, states should leave in place the existing TELRIC rates for the element, because what is “just and reasonable” under one part of the statute is, as a matter of law, “just and reasonable” under another part of the same statute.

Even if states chose to undertake an investigation into what constitutes a “just and reasonable” rate for the HFPL, TELRIC rates must remain in place until the conclusion of such investigation.

C. Questions

Covad has no questions at this time.

VI. ISSUE #6: RETIREMENT OF COPPER LOOPS

A. Issue

Under what circumstances may an ILEC retire copper loops or subloops?

B. Importance

States should not permit ILECs to retire copper in the absence of a state commission review to address the end user and competitive impacts of such retirement. Retirement of copper provides the ILECs with a simple way to eliminate competition now and to insure their monopolies over customers and services are not threatened in the future. States must be vigilant in monitoring this inherently anti-competitive activity by evaluating the customer impacts as well as the impact on CLECs resulting from such activities. Obviously, states also must address the prices, terms and conditions under which competing firms will continue to enjoy access to the features and functionalities provided by the retiring plant. Until such terms and conditions are in place, copper plant should not be permitted to be retired.

Therefore, ILECs should only be allowed to retire copper loops and subloops after the ILEC demonstrates that it has already made equivalent access available through alternative loop facilities that permit all carriers to obtain the same features and

functionality (including, but not limited to line splitting) and provide the same types of services that are possible through access to the copper loop or subloop.

The States must adopt procedures to require the filing by the ILECs of any plans they have to retire any copper loops or subloops. Under such procedures, the ILEC would first file a petition with the State Commission containing appropriate supporting information, setting forth the factual basis for its request and proof that it has satisfied each of the Commissions set substantive standards. Interested parties would then join the Commission in evaluating the ILEC submission in an evidentiary proceeding.

C. Questions

Before states allow ILECs to retire copper loops being used by CLECs to serve customers, states must consider the following: (1) the type of service being provided over the facility; (2) the availability of replacement facilities to provide identical service the customer; (3) the price of the alternative facilities in comparison to the price of the current facilities; (4) the charges by the ILEC for migration to new facilities including all service order, migration, provisioning or related charges; (5) the impact on the CLEC of paying the charges associated with moving the customer to another facility and that CLECs ability to make a profit on the line subsequent to incurring such expenses; and (6) the impact on competition that results from retirement of copper, including an assessment of what competitive alternatives exist for the customer once the copper is retired.

Before states allow ILECs to retire copper not currently being used by CLECs to provide service to customers, states should consider: (1) the impact on competition that results from retirement of copper, including an assessment of what competitive

alternatives exist for customer once the copper is retired; and (2) the amount of CLEC investment in a particular CO that may be stranded based on the retirement of copper loops from that CO.

VII. ISSUE #7: PACKET SWITCHING

A. Issue

Is the ILEC required to unbundled packet switching?

B. Importance

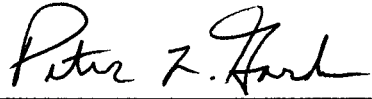
Based on the FCC's press release, the FCC's decision in this regard appears to be without substantial legal or factual basis. Further, it is incorrect to conclude that States may not require the unbundling of packet switching. First, under Section 271 of the federal Act, the Bell Operating Companies are required, as a condition of their offering in-region interLATA service, to offer "local switching" unbundled from transport and loop transmission. There is nothing in this provision that would limit switching to a particular technology or form of digital organization. Second, states retain the right pursuant to independent state law to require that incumbents unbundle their networks and these provisions are not usually limited to particular technologies. Consequently, while the FCC has not chosen to include packet switching in its national minimum list of network elements, states have the authority under Section 271 and the responsibility to require the unbundling of packet switching. States should not prejudge this issue, but should be prepared for future requests to adjudicate this issue. Local competition remains in its infancy, and states should not foreclose their ability to respond to future requirements that cannot be predicted with precision today.

C. Questions

Covad has no questions at this time.

Dated this 4th day of August, 2003.

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Company

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